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Viewing cable 09NAIROBI1829, VISAS DONKEY: CORRUPTION 212(F) VISA DENIAL

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Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

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If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#09NAIROBI1829**.

Reference ID	Created	Released	Classification	Origin
09NAIROBI1829	2009-09-01 08:58	2011-08-30 01:44	SECRET	Embassy Nairobi

Appears in these articles:

<http://www.spiegel.de/>

VZCZCXYZ0002
PP RUEHWEB

DE RUEHNR #1829/01 2440858
ZNY SSSSS ZZH
P 010858Z SEP 09
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 0826
INFO RUEHLO/AMEMBASSY LONDON PRIORITY 3308
RHEHNSC/NSC WASHDC PRIORITY

<<223100>>
09.01.2009 08:58
09NAIROBI1829
Embassy Nairobi
SECRET
08STATE81854
VZCZCXYZ0002
PP RUEHWEB

DE RUEHNR #1829/01 2440858
ZNY SSSSS ZZH
P 010858Z SEP 09
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 0826
INFO RUEHLO/AMEMBASSY LONDON PRIORITY 3308
RHEHNSC/NSC WASHDC PRIORITY

TAGS: [CVIS](#) [KCOR](#) [KCRM](#) [PGOV](#) [PREL](#) [ECON](#) [KE](#)
SUBJECT: VISAS DONKEY: CORRUPTION 212(F) VISA DENIAL
REF: A. 2008 STATE 81854

S e c r e t nairobi 001829

Sensitive
sipdis

Dept for a/s carson, inl/c/cp, jane becker; nsc for senior
director gavin

E.o. 12958: decl: 08/27/2019
Tags: cvis, kcor, kcrm, pgov, prel, econ, ke
Subject: visas donkey: corruption 212(f) visa denial

Ref: a. 2008 state 81854
b. Td-314/081112-08
c. Td-314/081567-08
d. Td-314/083973-08

Classified By: Ambassador Michael Ranneberger, Reasons 1.4 b,d

¶1. (C) Embassy is seeking a security advisory opinion under Section 212(f) of the Immigration and Nationality Act (INA), Proclamation 7750, precluding the entry into the United States of Henry Kiprono Kosgey and his family. Kosgey was born in Nandi district, Rift Valley Province, Kenya on July 14, 1947. There is strong evidence that Kosgey has consistently engaged in official corruption from at least 1987 to the present while holding a variety of ministerial and parastatal director positions, and that corruption has had serious adverse effects on both U.S. foreign assistance goals and on the stability of Kenya's democratic institutions. The following provides information requested in ref A, paragraphs 26-28.

¶2. (C) Like many members of Kenya's political elite, Kosgey has had a long career in politics and served in numerous ministerial positions under the kleptocratic administration of former President Daniel arap Moi. He has, however, also continued to enrich himself at the public's expense while serving as a member of Parliament (MP), as director of the parastatal and now bankrupt Kenya National Assurance Company and as Minister for Industrialization under the current coalition government.

¶3. (C) Kosgey was first elected as MP of Tinderet constituency in Rift Valley Province in 1979 under Moi's Kenya African National Union (KANU) party. (Note: At that time, Kenya was a single-party state.) He was re-elected as MP in 1983, 1988, 1992, 2002, and 2007, when he ran as a candidate under Prime Minister Raila Odinga's Orange Democratic Movement (ODM) party. After becoming an MP, Kosgey served under Moi as Minister for Transport and Communications (1980-1985), Minister for Cooperatives Development (1985-1986), and Minister for Culture and Social Services (1987-1988). Kosgey, like Moi, is an ethnic Kalenjin from Rift Valley province. Although he is a member of the Nandi sub-tribe and not Moi's Tugen sub-tribe, he was for many years a close and trusted associate of the former president. From 1989 to 1992, he served as Executive Chairman of the now-defunct parastatal Kenya National Assurance Company (KNAC). From 1993 to 1996, he served as an MP but did not hold a cabinet position. In 1996, he reentered the cabinet when he was appointed by Moi as Minister for Environment and Natural Resources (1996-1997). He subsequently served as Minister for Tourism (1998-1999), Minister for Science and Technology (1999-2001), and Minister of Education (2001-2002). During President Kibaki's first term (2003-2007), Kosgey reinvented himself as an ODM MP after Moi left power in 2002. Following the formation of the coalition government in February 2008, he was appointed by Prime Minister Odinga as head of the newly-created Ministry of Industrialization, a post he currently holds. He is also the current chairman of ODM.

Embezzling funds, looting parastatal assets

¶4. (C) Open source reporting alleges that, when serving as Minister of Culture and Social Services, Kosgey was part of the team that brought in American marketing consultant Dick Berg to assist Kenya in organizing and hosting the fourth All-Africa Games in 1987. Berg's task was to assist the GOK in raising funds to support the games; he is accused of fleeing the country with roughly \$2.6 million before the games began. Kosgey is also alleged to have participated in the looting of the assets of the Games' organizing committee by misappropriating funds designated for costs associated with the Games for his personal use. Kosgey is also accused of looting the real estate assets of former parastatal Kenya National Assurance Company (KNAC) when he served as its director from 1989 to 1992. Under his management, KNAC is also alleged to have made illegal loans and paid out fraudulent claims to politically connected individuals. By illegally appropriating KNAC's most valuable assets, Kosgey reduced the company to an undercapitalized shell that ultimately collapsed and failed to meet its financial obligations to pension and life insurance policy holders. At the time the KNAC went into receivership, it held more than \$13 million in life insurance policies. As a result of the collapse of KNAC, 900 employees lost their jobs and thousands of Kenyans from all walks of life lost their pensions or did not receive insurance payments upon the deaths of beneficiaries. The former employees also allege that the company owes them an estimated \$655,000 in pension benefits.

Accused of grabbing public lands

¶5. (C) When President Kibaki first took office in 2003, he ordered a number of commissions of inquiry aimed at examining and correcting some of the worst corruption excesses of the Moi era. Unfortunately, once the first blush of reformist zeal had passed, there was almost no accountability for those officials named in the commissions' reports or implementation of the commissions' corrective recommendations. The Ndung'u Commission was constituted in 2003 to investigate "irregular allocation" or illegal privatization of public land in urban areas, settlement schemes, forests, and reserves during the Moi era. Its report, released in December 2004, was more than 2,000 pages long with annexes and provided the most comprehensive analysis to date of shady land deals during the Moi years (1978-2002). The commission recommended the revocation of hundreds of land allocations, including many to past and current political figures. To date, none of these revocations have been implemented despite pledges by current Minister of Lands James Orengo to do so.

¶6. (C) Kosgey (along with fellow minister Sally Kosgei) is named in the Ndung'u report as the improper recipient of more than 300 hectares of the South Nandi forest in 1999. According to local anti-corruption NGO Mars Group Kenya, the illegal carving out of a total of 1,170 hectares of forest land was supposed to be part of a land swap in which Kosgey and two other politicians would exchange the forest land for farmland held by local farmers and the minority Ngerek community. When the exchange took place, many of the intended beneficiaries were excluded and rendered landless. In 1995, Kosgey was serving on the board of directors of Kakuzi Tea Company, which is still in existence and is publicly traded on the Nairobi and London stock exchanges. He is accused of colluding with other corrupt directors in stripping Kakuzi of some of its prime assets by illegally transferring 97 hectares of Siret Farm (a tea plantation) to the Tinderet Development Trust Company, a shell company co-owned by Kosgey and his son Allan. In the face of declining global tea prices and burdened by debt of more than \$8.5 million, Kakuzi put the remainder of Siret Farm up for public sale in 2007.

Involvement in post-election violence and opposition to accountability

¶7. (S) In October 2008, Kosgey was named in the report of the Commission to Investigate Post-Election Violence (CIPEV), commonly known as the Waki Commission after its chairman,

Justice Philip Waki. The report alleged that Kosgey participated in incitement, planning, and illegal financing of post-election violence in and around his rural constituency of Tinderet in the Nandi Hills district of Rift Valley province. Tinderet is a tea-growing area, and many tea pickers working on the plantations hail from western Kenya and are ethnic Luo or Luhya. Many workers and their families, who usually live in company-owned housing on the larger plantations, fled or were driven out of the area during the post-election violence by groups of youths who resented non-Kalenjins being employed in the local tea industry.

18. (C) When the report was released, Kosgey joined a number of his fellow ODM MPs in rejecting the Waki Commission's findings, despite Odinga's public statements that the Waki report's recommendations be fully implemented. Key recommendations included setting up a local special tribunal to try persons suspected of participating in post-election violence and/or sending the dossiers on these individuals to the International Criminal Court (ICC) for potential prosecution. In his capacity as ODM chairman and as an MP, Kosgey has repeatedly and publicly rejected both the local tribunal and ICC options, joining some of the other MPs named in the Waki report as instigators in calling instead for healing and reconciliation. In public remarks on October 14, 2008, Kosgey stated that "the people in that list were not given a chance to defend themselves. That is very unfair."

Questions on the maize scandal

19. (C) In early 2009, a national scandal erupted when a number of prominent politicians, including Minister of Agriculture William Ruto, were accused of speculating in government-subsidized maize designated to feed the hungry after the planting cycle was disrupted in many growing areas by the post-election violence. (Note: Kosgey's constituency was among those most affected, as it is located near the epicenter of inter-ethnic violence in Rift Valley province.) Twenty-one MPs and three ministers, including Kosgey, were summoned for questioning by investigators at the Kenya Anti-Corruption Commission (KACC) in February 2009. Local media reported that Kosgey was asked about letters he sent to the National Cereals and Produce Board requesting an allocation of subsidized maize.

Hiring and firing without transparency

10. (C) As Minister of Industrialization, Kosgey is responsible for overseeing the operation, management, and privatization of the Kenyan government's ten state corporations. He also oversees the implementation of the GOK's new "quality mark" requirement without which many goods cannot be sold in Kenya. Many private sector companies, including major U.S. companies like Eveready and Sara Lee, have protested this new requirement adds unreasonable costs to importing goods and discriminates against products manufactured outside Kenya. Major private sector advocacy groups, including the Kenya Association of Manufacturers (KAM), have also noted the great potential for corruption in implementation of the new quality mark requirement. In June 2009, KAM also accused Kosgey of illegally and unilaterally removing some of the private sector members of the board of the Kenya Bureau of Standards, the entity charged with implementing the quality mark program. xxxxxxxxxxxx have told us that they have credible information that Kosgey is benefitting illegally from the imposition of the quality mark requirements (i.e., by taking bribes from local producers in lieu of their actual compliance with the new quality standards) and that he is deeply involved in corruption.

11. (C) In July 2009, Kosgey was publicly accused by his Assistant Minister Nderiti Mureithi (a member of Kibaki's Party of National Unity) of improperly firing three heads of parastatals (the Industrial Development Bank, the Kenya Industrial Research and Development Institute, and the Kenya Industrial Estates) without following proper procedures and without consulting the boards of directors of those companies. In an interview with national TV outlet NTV,

Mureithi called Kosgey "a throwback to the dark days of the Moi era" and alleged that the three directors were unilaterally fired by Kosgey without any consultation and replacements selected by him without a transparent or competitive recruitment process as required by Kenyan law. Odinga ultimately had to intervene in the dispute and ordered that the directors remain in office until the correct procedures could be instituted to remove them.

Negative impact on u.s. National interests

¶12. (S) Stability of Democratic Institutions and Impact on U.S. Businesses: Kosgey's involvement in inciting post-election violence in Rift Valley province directly contributed to the deaths and displacement of Kenyans and significantly undermined the stability and security of the region. Non-Kalenjin tea workers had to flee their jobs and the tea industry was hit hard by the disruption of production and interference with local transport routes. Displacements in the region also disrupted the planting and harvesting cycles and directly contributed to hunger and official involvement in speculation in the maize market. Kosgey's corrupt activities also have an adverse impact on U.S. national interests in promoting the reform agenda agreed upon in the Annan accord. Because he is an influential voice in the Kalenjin community, Kosgey's repeated public opposition to prosecution of perpetrators of violence, either locally or internationally, has contributed to undermining public confidence in the judiciary and will make it much more difficult to pursue accountability in these cases. His extensive illegally-acquired land holdings will motivate him to oppose meaningful land reform legislation when it comes up in parliament later this year. He is also likely to oppose reform-oriented land policy changes in a new constitution. His corrupt and unfair application of the quality mark program has had a direct discriminatory impact on importers and vendors of U.S. products in Kenya.

¶13. (C) U.S. Foreign Assistance Goals: Kosgey's diverse corruption activities over decades have negatively impacted U.S. foreign assistance goals in a number of ways. His continuing ownership of illegally transferred forestry lands, part of the greater Mau Forest which comprises Kenya's largest water catchment area, has contributed to ethnic conflict over land ownership in Rift Valley, and has also contributed to deforestation and resulting drought and hunger that currently plagues Kenya. Donors, including the United States, have had to provide billions of dollars in emergency food aid to Kenya over the last four years of chronic drought, even in areas of Rift Valley that were historically the most agriculturally productive regions of Kenya. His looting of public and private company assets undermine investor confidence, directly create job loss, and damage public confidence in the security of pension funds. Kosgey has repeatedly ignored government regulations for hiring and firing directors of parastatals and, through these actions, signals a profound disrespect for the rule of law which we are striving to promote.

Additional information required for finding

¶14. (C) Kosgey has not been informed that he may be ineligible for a U.S. visa under section 212(f) of the INA and Proclamation 7750.

¶15. (C) Kosgey last traveled to the U.S. in November 2006. He applied for and was issued U.S. visas in 1997, 1999, 2003, 2004, 2005, and 2006 (all G2 visas). His most recent application was for a G2 visa to attend a parliamentary forum at the UN General Assembly in New York. He was issued a G2 multiple-entry, 3-month visa on November 2, 2006 in diplomatic passport D006890. He has not applied for a visa since 2006. As a sitting minister and member of parliament, he may intend to apply for a U.S. visa for either professional or personal travel. However, we do not have any clear indication that he intends to apply soon. He has two sons who have made forays into politics: Allan Kosgey, who is a co-director of the Tinderet Development Trust with his

father, and youngest son Alex Kosgey, an aspiring MP.

¶16. (C) Since almost the beginning of his long political career, Kosgey has consistently availed himself of opportunities to enrich himself at the expense of the Kenyan taxpayer. His participation in official corruption led directly to the financial collapse of one parastatal, and he has also undermined stability and security in the Rift Valley by instigating and planning inter-ethnic violence before, during, and after the December 2007 elections. Post recommends that he be excluded for travel to the U.S. under section 212(f) of the INA and that no exception be granted.
Ranneberger